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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/758,337	01/15/2004	Eugene Parets	16-336	6417

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WATTS HOFFMANN CO., L.P.A.
Ste. 1750
1100 Superior Avenue
Cleveland, OH 44114

EXAMINER

GIBSON, RANDY W

ART UNIT	PAPER NUMBER
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2841

DATE MAILED: 02/02/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/758,337

Applicant(s)

PARETS ET AL.

Examiner

Randy W. Gibson

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-32 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-32 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 15 January 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. ____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|-----------------------------------------------------------------------------------------|-----------------------------------------------------------------------------|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. ____. |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date ____. | 6) <input type="checkbox"/> Other: ____. |

DETAILED ACTION

Claim Rejections - 35 USC § 102

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claims 1, 2, 4-6, 8-14, 16 are rejected under 35 U.S.C. 102(b) as being anticipated by Kendall et al. Kendall discloses the claimed invention including diverting products from a supply that was moving along a first path into a second path whenever a predetermined weight is reached (Col. 4, lines 34-45). There is no express step of automatically “discharging” a batch of material when a target weight is reached; however, the examiner notes that full bags are replaced by empty ones manually whenever the diverter switches the feed from one channel to another, so this step of replacing the bags is considered to be a “discharge”.
3. Claims 1, 2, 4-6, 8-14, 16-18, 20-24, 26-32 are rejected under 35 U.S.C. 102(b) as being anticipated by Moran. Moran discloses the claimed invention including diverting products from a supply that was moving along a first path into a second path whenever a predetermined weight is reached (Col. 1, line 51 to col. 2, line 12; Col. 2, line 46 to col. 3, line 64). The microprocessor is the claimed “controller”, the claimed

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"funnel" is element 14, and the claimed "directing flap" are clamshell doors 50 & 51 (Col. 5, lines 26-47). Moran also has multiple diverters and multiple weighers (Col. 5, lines 48-62).

Claim Rejections - 35 USC § 103

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. Claims 3, 7, and 15 are rejected under 35 U.S.C. 103(a) as being unpatentable over Moran in view of Nielsen et al. Moran (discussed *supra*) discloses the claimed invention except for the step of manually feeding items into the supply line to complete the batches. However, Nielson discloses that this is known (Col. 15, lines 8-14). It would have been obvious to the ordinary practioner to manually feed articles into the device of Moran to provide precise control over the size of the completed batches.

6. Claims 19 and 25 are rejected under 35 U.S.C. 103(a) as being unpatentable over Moran in view of Howard. Moran (discussed *supra*) discloses the claimed invention except for the use of a "staging hopper". It is know in combinational weighing devices to place pool hoppers, or holding hoppers, under the weighing hoppers to store

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already completed batches in order to allow multi-shift operation of the downstream packing machine (Col. 8, line 44 to col. 9, line 6). It would have been obvious to the ordinary practitioner to include a staging hopper below the weighing hoppers of Moran, as suggested by Howard, to improve throughput of the downstream packing machine by allowing multi-shift operation.

Conclusion

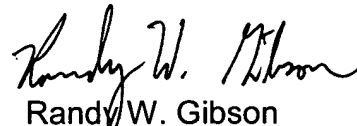
7. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Edwards et al shows manually feeding meat portions into a combinational weigher.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Randy W. Gibson whose telephone number is (571) 272-2103. The examiner can normally be reached on Mon-Fri., 9-5.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Kamand Cuneo can be reached on (571) 272-1957. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


Randy W. Gibson
Primary Examiner
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